

SUPER LAW GROUP, LLC

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June 4, 2014

Via Certified Mail, Return Receipt Requested

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, D.C. 20044-7415

RECEIVED
JUN 11 2014
OFFICE OF THE REGIONAL ADMINISTRATOR

Re: Soundkeeper et al. v. The Shetucket Iron & Metal Company, Inc., United States District Court for the District of Connecticut, Case No. 3:13-cv-1276

Dear Citizen Suit Coordinator,

Pursuant to 33 U.S.C. § 1365(c)(3) of the Clean Water Act (CWA), lead counsel for Plaintiffs Soundkeeper, Inc., Connecticut Fund for the Environment, Inc. and Conservation Law Foundation, Inc., provides the attached proposed consent decree between Plaintiffs and The Shetucket Iron & Metal Company ("Shetucket"), resolving alleged violations of the CWA and the General Permit for the Discharge of Stormwater Associated with Industrial Activity, issued by the Connecticut Department of Energy and Environmental Protection. The parties intend to file a joint motion for entry of consent judgment with the United States District Court for the District of Connecticut. This motion will be brought before the Court following the 45-day period for U.S. government review of the consent decree required by 40 C.F.R. §135.5(b).

The consent decree provides that Shetucket may make an environmental benefit payment to the Rivers Alliance of Connecticut. The payment is conditional, it is triggered only if certain conditions of the proposed consent decree are not met. The payments will be used on projects relating to the reduction, mitigation, and/or remediation of the effects of stormwater pollution or environmental restoration of or other benefit to the Thames River (or its tributaries) and Long Island Sound.

We have attached written confirmation from Rivers Alliance of Connecticut that it (1) has read the proposed settlement agreement; (2) will spend any monies it receives under the settlement agreement for the purposes specified in the agreement; (3) is a 501(c)(3) tax-exempt organization; (4) will not use any money received under the settlement agreement for political lobbying activities; and (5) will submit a letter to the

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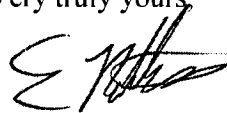
Citizen Suit Coordinator
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Court, the United States and the parties describing how those funds were spent.

By submitting this consent decree, counsel for Plaintiffs asks the United States to promptly review the agreement and, if it does not object to dismissal of this action, to so notify the Court.

If you have any questions or concerns regarding this matter, please contact me.

Very truly yours,



Edan Rotenberg
Super Law Group, LLC
131 Varick Street, Suite 1033
New York, NY 10013
(212) 242-2355
edan@superlawgroup.com

Attorney for Soundkeeper Inc.,
Connecticut Fund for the
Environment, Inc., and Conservation
Law Foundation, Inc.

Encls.

cc:

Gina McCarthy, Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
(via certified mail)

H. Curtis Spalding, EPA Region 1 Administrator
Environmental Protection Agency
5 Post Office Square - Suite 100
Boston, MA 02109
(via regular mail)



Rivers Alliance of Connecticut

June 3, 2014

BOARD

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A tax-exempt
organization under
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Internal Revenue
Code

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415, Ben Franklin Station
Washington, D.C. 20044-7415

Re: Proposed Consent Decree, Case No. 3:13-cv-1276
Soundkeeper et al vs. The Shetucket Iron and Metal Company, Inc.

Dear Citizen Suit Coordinator:

Rivers Alliance of Connecticut, Inc., is a 501(c)(3) nonprofit organization dedicated to the protection and restoration of rivers and all waters in Connecticut. We were founded in 1992, and our tax identification number is 06-1361719. We assist local watershed groups, provide educational programs on the value of water resources, and work to establish sound policies and practices for water management.

We have received and read the proposed consent decree relating to The Shetucket Iron and Metal Company, Inc. (7 New Wharf Road, Norwich, CT 06360) in which Rivers Alliance is named as the recipient of an Environmental Benefit Payment in the amount of \$100 for each instance of non-compliance with certain conditions of the decree. Such payments shall be used for local projects relating to the reduction, mitigation, and/or remediation of the effects of stormwater pollution or environmental restoration of or other benefit to the Shetucket River, Thames River, and/or Long Island Sound watersheds. Rivers Alliance has a strong interest in the Shetucket and Thames rivers, their tributaries, and their receiving waters, in particular, Long Island Sound.

Rivers Alliance will manage and oversee this Environmental Benefit Payment (EBP) so that the funds will serve solely to fulfill the purpose of the consent decree. No portion of the payments from this settlement will be awarded to any parties to the agreement. Nor will any portion of the funds be used for lobbying or other political activities. When such EPB is received and put to use for the benefit of the water bodies named above, Rivers Alliance of Connecticut will submit a letter describing how the funds were spent.

Thank you for helping to conserve rivers in Connecticut. If you need more information, please let me know.

Sincerely, 
Margaret Miner, Executive Director

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

| | |
|-------------------------------------|-----------------------------|
| ----- | X |
| SOUNDKEEPER, INC., CONNECTICUT FUND | : |
| FOR THE ENVIRONMENT, INC., and | : |
| CONSERVATION LAW FOUNDATION, INC., | : |
| | : Case No. 3:13-cv-1276 |
| Plaintiffs, | : |
| | : |
| v. | : [PROPOSED] CONSENT |
| | : DECREE |
| THE SHETUCKET IRON & METAL COMPANY, | : |
| INC., | : |
| | : |
| Defendant. | X |
| ----- | |

WHEREAS, Plaintiffs Soundkeeper, Inc. ("Soundkeeper"), Connecticut Fund for the Environment, Inc. ("CFE") and Conservation Law Foundation, Inc. ("CLF") filed this action on August 29, 2013, against Defendant Shetucket Iron & Metal Company, Inc. ("Shetucket"), alleging violations of 33 U.S.C. §§ 1311 (a) and 1342 of the Clean Water Act and seeking declaratory and injunctive relief, civil penalties, and reasonable attorneys' fees and costs;

WHEREAS, Soundkeeper is a Connecticut based nonprofit environmental organization with members who use and enjoy Long Island Sound, for both commercial and recreational purposes;

WHEREAS, CFE is a Connecticut based nonprofit environmental organization with members who use and enjoy Connecticut's lakes, rivers and Long Island Sound;

WHEREAS, CLF is a regional, nonprofit environmental organization with members who use and enjoy the Long Island Sound watershed for recreational, aesthetic and scientific purposes;

WHEREAS, Shetucket owns and operates a scrap metal facility located along New Wharf Road in Norwich, between the east bank of the Thames River and the railroad tracks, on a parcel of land generally referred to as 7 New Wharf Road (the "Facility");

WHEREAS, Shetucket has represented to Soundkeeper, CFE and CLF that Shetucket does not conduct industrial activities at or on any other parcels of land;

WHEREAS, Soundkeeper, CFE and CLF have alleged that the Facility discharges stormwater associated with industrial activity into the Thames River;

WHEREAS, Shetucket is implementing concrete measures to greatly limit the possibility that water infiltrating to groundwater will contain pollutants.

WHEREAS, Soundkeeper, CFE and CLF have alleged that Shetucket operates under a primary Standard Industrial Classification ("SIC") Code of 5093 at the Facility, and is therefore subject to Connecticut's General Permit for the Discharge of Stormwater Associated with Industrial Activity (the "General Permit");

WHEREAS, Soundkeeper, CFE and CLF have alleged, in the August 29, 2013 complaint (the "Complaint") and in notice of intent to sue (the "Notice Letter") dated June 13, 2013, that Shetucket has violated and continues to violate 33 U.S.C. §§ 1311(a) and 1342 by, inter alia, discharging polluted stormwater associated with industrial activity without coverage under the General Permit and by failing to comply with the conditions of the General Permit. Among other things, the General Permit requires development and implementation of a Stormwater Pollution Prevention Plan ("SWPPP"), stormwater monitoring, inspections, recordkeeping and reporting;

WHEREAS, following receipt of the Notice Letter and the filing of the complaint, Shetucket invited Plaintiffs to enter and inspect the Facility, have made their consulting engineer available and have cooperated fully with Plaintiff's requests for information;

WHEREAS, Shetucket will submit to DEEP a Notice of Intent to Seek Coverage under the General Permit as soon as this Consent Decree is executed by the Parties and lodged with the Court;

WHEREAS, Shetucket developed a SWPPP and provided Plaintiff with an early draft;

WHEREAS, Plaintiff reviewed the early SWPPP prepared by Shetucket, noted certain deficiencies and concerns, and communicated these concerns to Shetucket.

WHEREAS, in response, Shetucket has developed a revised SWPPP that:

- Improves routine inspection procedures in areas including inbound material inspection, battery storage, and leak inspection of tanks and hydraulic lines on heavy equipment;
- Improves housekeeping practices specifying that, going forward, all dumpsters will be stored under a roof or covered with a tarp when not being loaded or unloaded;
- Provides a list of materials that will not be accepted for processing, including metal turnings and other materials with a greater likelihood of pollutant exposure;
- Implements annual cleanups and periodic inspections to identify and remove materials that could be better controlled to reduce stormwater exposure;

- Includes a new 10 foot vegetative buffer zone (in which no scrap metal will be stored) along the western shore of the facility to reduce the potential for surface discharge into the Thames River;
- Includes construction of a new 130 foot long earthen berm, along the east side of the property near the area where metal shearing and compacting operations take place, designed to prevent run-on and contain run-off and graded to drain in a southerly direction;
- Include the creation of a new 50 foot wide vegetative buffer (with an existing access easement maintained) to the south of the property to collect and settle polluted stormwater;
- Adds a containment system to the hydraulic tank on the metal shear;
- Calls for completion of these structural measures by October 31, 2014; and
- Improves dust suppression practices in the metal processing area; and
- Designates sampling points for ongoing monitoring in compliance with the General Permit in the event that stormwater flows through, over or around the berm to the Thames River.

WHEREAS, Shetucket maintained coverage under previous versions of the General Permit from 1992 to 2002;

WHEREAS, discharge monitoring reports from this period record multiple exceedances at the Facility of stormwater monitoring benchmarks established in the General Permit;

WHEREAS, after making certain alterations at the Facility, Shetucket concluded that it no longer discharged or had potential to discharge stormwater associated with industrial activities and therefore was not required to renew coverage under the General Permit;

WHEREAS, there is a record of correspondence showing that, in the years in which Shetucket operated without permit coverage: DEEP corresponded with Shetucket about its failure to renew permit coverage; DEEP officials inspected the Facility; Shetucket's operators informed DEEP officials that it had never been their intention not to comply with state or federal water pollution laws; and subsequent to inspection, DEEP officials requested more information from Shetucket about its operations but did not issue a formal decision or enforcement action related to Shetucket's status under the Clean Water Act;

WHEREAS, Shetucket alleges that its communications with DEEP officials reinforced its conclusion that it could, in good faith, continue to operate without coverage under the General Permit or another permit issued in compliance with Section 402 of the Clean Water Act (33 U.S.C. § 1342);

WHEREAS, Shetucket alleges that this record of correspondence shows that Shetucket did not *willfully* violate the Clean Water Act;

WHEREAS, Soundkeeper, CFE, and CLF agree that, Shetucket has made good faith efforts to comply with the Clean Water Act, including the permitting provisions of Section 402 of the Clean Water Act (33 U.S.C. § 1342);

WHEREAS, Soundkeeper, CFE, CLF and Shetucket (collectively, “the Parties” or individually “Party”) agree that it is in their mutual interest to resolve this matter without the taking of evidence or findings of fact or law, and the Parties would like to avoid prolonged and costly litigation;

WHEREAS, this Decree shall be submitted to the United States Department of Justice and the United States Environmental Protection Agency for the 45 day statutory review period, pursuant to 33 U.S.C. § 1365(c);

NOW, THEREFORE, without the trial of any issue of fact or law, without the admission by Shetucket of any of the facts or violations alleged in the Complaint of any noncompliance or liability of any kind, upon consent of the Parties, and upon consideration of the mutual promises contained herein,

IT IS HEREBY STIPULATED BETWEEN THE PARTIES AND ORDERED, ADJUDGED AND DECREED BY THE COURT as follows:

I. DEFINED TERMS

The defined terms set forth in the foregoing recitals are hereby incorporated into the body of this Decree and are made a part hereof. In addition, the following terms used in this Decree have the meaning set forth below:

1. Effective Date: the day the Court enters this Decree after the expiration of the forty-five (45) day review period required by 33 U.S.C. § 1365(c)(3).
2. Facility: the industrial facility and real property located along New Wharf Road in Norwich, between the east bank of the Thames River and the railroad tracks, on a parcel of land enumerated as 7 New Wharf Road.
3. Term of this Decree: the period beginning on the Effective Date and ending two (2) years from the date of the Effective Date.

II. JURISDICTION AND VENUE

4. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). For the limited purposes of this Decree, Shetucket does not contest that Plaintiffs have standing and have complied with the

statutory notice requirements under 33 U.S.C. § 1365(a)(1), and the corresponding regulations at 40 C.F.R. § 135.2. An actual, justiciable controversy exists between Plaintiffs and Defendant. The requested relief is proper under 28 U.S.C. §§ 2201, 2202 and 33 U.S.C. § 1365(a).

5. Venue is properly vested in this Court pursuant to 33 U.S.C. § 1365(c)(1), because the events giving rise to this action occurred at the Facility, and in the Thames River and Long Island Sound watersheds, which are located within this judicial district.
6. For purposes of this Decree or any action to enforce this Decree only, and not for any future actions or claims, Shetucket consents to the Court's jurisdiction over this Decree and over Shetucket and consents to venue in this judicial district.

III. SWPPP COMPLIANCE PROGRAM

7. Not later than thirty (30) days after the signing of this decree, Shetucket shall submit to DEEP a Notice of Intent to obtain coverage under the General Permit.
8. Not later than thirty (30) days after the signing of this decree, Shetucket shall submit to DEEP the revised SWPPP dated April 22, 2014, or a substantially similar SWPPP including any minor, non-substantive corrections that any Party may identify in the intervening period or any modifications as required by DEEP or deemed necessary by Shetucket to comply with applicable law.
9. Shetucket shall provide a copy of its filing to Soundkeeper, CFE and CLF at the same time Shetucket sends it to DEEP.
10. Shetucket will implement the SWPPP at the Facility in compliance with the terms of the General Permit and other applicable law, subject to such modifications or conditions as may be required by DEEP. Nothing stated herein shall prevent any future modifications from being made to the SWPPP so long as they comply with applicable law and/or comments or directives from DEEP, and no such modifications shall require the consent of any plaintiff or the approval of the Court.

IV. MONITORING PROGRAM

11. Shetucket will sample its stormwater discharges in accordance with the applicable provisions of the General Permit, and in accordance with the SWPPP. Shetucket shall report its monitoring results to DEEP in accordance with the General Permit and shall provide a copy of each report to Soundkeeper, CFE and CLF at the same time it sends those results to DEEP.
12. Samples shall be taken at the sampling points and under the conditions described in the then-applicable provisions of the SWPPP.

13. Shetucket will comply with all inspection requirements of the applicable provisions of the General Permit. Shetucket will send a copy of each inspection and/or sampling result to Soundkeeper, CFE and CLF at the same time it sends those results to DEEP.
14. Shetucket may take additional samples of its stormwater discharges. If it does so, Shetucket shall send a copy of each such inspection and/or sampling result to Soundkeeper, CFE and CLF at the same time it sends those results to DEEP.
15. If Shetucket is required by DEEP to amend its SWPPP for any reason including but not limited to the reasons enumerated in General Permit Section 5(c)(5), Shetucket shall provide a copy of such amendments, once adopted, to Soundkeeper, CFE and CLF.
16. Shetucket shall maintain such written documentation at the Facility describing all inspections and assessments to the extent required under applicable provisions of the General Permit or of this Decree. Shetucket shall forward copies of such documentation to Soundkeeper, CFE and CLF on a quarterly basis, within thirty (30) days of the close of each quarter, for the first year after the Effective Date and on an annual basis for the remainder of the Term of this Decree, within thirty (30) days of the close of the year.

V. ENVIRONMENTAL BENEFIT PAYMENTS AND REIMBURSEMENT OF LITIGATION COSTS

17. If Shetucket fails to provide any required documentation to DEEP or Soundkeeper, CFE and CLF by the deadlines required by the General Permit or this Decree, Shetucket will make an environmental benefit payment of one hundred dollars (\$100) for each instance of failure to provide information and/or documentation and/or missed deadline. Payment shall be made in the form of a certified bank check to the Rivers Alliance of Connecticut, P.O. Box 1797, 7 West Street, 3rd Floor, Litchfield, CT 06759, tel: 860-361-9349, for environmental restoration of or other benefit to the Thames River or Long Island Sound watersheds. Payment of each additional amount shall be due fourteen (14) days following each missed deadline. Shetucket shall notify Soundkeeper, CFE and CLF in writing concurrently each time a payment is made and provide a copy of each check. None of these payments shall be disbursed to Soundkeeper, CFE or CLF.
18. Shetucket shall pay a sum of twenty-five thousand, seven hundred and ten dollars (\$25,710) as full and complete satisfaction of Soundkeeper, CFE and CLF's claim for attorneys' fees, engineering fees, and litigation costs incurred to date in this matter. The payment shall be made by certified bank check addressed to and made out to Super Law Group, LLC, 131 Varick Street, Suite 1033, New York, NY, 10013, tel: 212-242-2355, as trustee, and shall be made in installments of \$5,000/month with the first payment within thirty (30) days after the Effective Date.
19. In the event that any environmental benefit payment or reimbursement of litigation costs owed by Shetucket under the Decree is not made on or before the due date, Shetucket shall be deemed in default of its obligations under the Decree, and, at Plaintiffs' discretion based on written notification to Shetucket, all of the outstanding payment

obligations under this Decree shall be accelerated such that they shall be immediately due and owing. In addition to a continued requirement to make the payment, Shetucket will pay ten (10) percent annual interest, accruing daily, on any unpaid balance.

VI. EFFECT OF DECREE

20. Upon Court approval and entry of this Consent Decree, Soundkeeper, CFE and CLF covenant not to sue and release Shetucket (including its representatives, assigns, agents, employees, officers, attorneys and consultants) from any and all claims, causes of action, or liability under Section 505 of the Clean Water Act, 33 U.S.C. § 1365, for damages, penalties, fines, injunctive relief, or any other claim or relief (i) relating to or resulting from noncompliance with the General Permit at the Facility occurring prior to the Effective Date, and (ii) for any past violations of the Clean Water Act at the Facility alleged, or that could have been alleged, in the Complaint. Notwithstanding the foregoing, if Shetucket conducts industrial activities away from the Facility, the covenant not to sue and release contained in this paragraph shall not apply to claims, causes of action, or liability relating to such other locations. This Paragraph does not constitute a waiver or release of any claims relating to the enforcement of this Decree. Soundkeeper, CFE and CLF do not waive their right to bring a future action for injunctive or declaratory relief, penalties, and attorneys' fees and costs based on stormwater discharges that occur after the expiration of the Term of this Decree.
21. Shetucket will comply fully with the General Permit and any permit modification, individual permit, or General Permit reissuance applicable to the Facility during the Term of this Decree.
22. Shetucket releases and discharges Soundkeeper, CFE and CLF, their representatives, assigns, agents, employees, officers, attorneys and consultants, including those who have held positions in the past, from any and all claims, liability, demands, penalties, costs, and causes of action of every nature in connection with this action.
23. Soundkeeper, CFE and CLF do not by consent to the Decree warrant or aver in any manner that Shetucket's compliance with this Decree will constitute or result in compliance with federal or state law or regulation. Nothing in this Decree shall be construed to affect or limit in any way the obligation of Shetucket to comply with all federal, state, and local laws and regulations governing any activity required by this Decree.
24. All payments to Soundkeeper, CFE or CLF for reimbursement of their litigation costs pursuant to this Decree shall be made in form of a certified bank check. Any check issued for such payment pursuant to this Decree must be received by Soundkeeper, CFE or CLF no later than the date specified in this Decree.
25. Shetucket agrees that as a condition of transfer of ownership or control of the Facility to an entity independent of Shetucket, for an industrial use subject to the General Permit, the

new owner or operator will be informed in writing of this Decree and of its requirements to comply with the General Permit.

VII. REVIEW AND TERM OF DECREE

26. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), this Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Decree by the United States Attorney General and the EPA. Therefore, upon signing of this decree by the Parties, Soundkeeper, CFE and CLF shall serve copies of this Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5. If for any reason the United States should decline to approve this Decree in the form presented, the Parties agree to continue negotiations in good faith to cure any objection to entry of this Decree raised by the United States.
27. Upon the expiration of the forty-five-day review period provided by 33 U.S.C. § 1365(c)(3), the Parties will jointly move the Court for entry of this Decree. This Decree shall take effect on the date it is entered by this Court and shall terminate two (2) years from when it is entered by the Court; provided, however, that if Shetucket has not complied with any provision of this Decree by the end the Term, the Decree shall not terminate until such provision(s) have been complied with and Soundkeeper, CFE and CLF may seek to enforce this Decree after the end of the Term, if any of Shetucket's obligations are outstanding at that time. In order to exercise this right, Soundkeeper, CFE and CLF must provide notice of any alleged non-compliance to Shetucket prior to the end of the Term.
28. If for any reason the Court should decline to approve this Decree in the form presented, the Parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the Court to entry of this Decree.

VIII. MODIFICATION AND ENFORCEMENT OF DECREE

29. This Decree may be modified only upon written consent of the Parties and the approval of the Court.
30. The United States District Court for the District of Connecticut shall retain and will have jurisdiction over the Parties to this Decree for the resolution of any disputes that may arise under this Decree. This Court shall also allow this action to be reopened for the purpose of enabling the Parties to this Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Decree.
31. Soundkeeper, CFE and CLF will provide Shetucket with seven (7) calendar days written notice prior to initiating court proceedings to enforce this Decree. Such notice shall be given as provided in Paragraph 32 of this Decree.

IX. DISPUTE RESOLUTION PROCEDURE

32. **Meet and Confer.** Except as specifically noted herein, any disputes with respect to any of the provisions of this Decree shall be resolved through the following procedure. The Parties agree to first meet and confer to resolve any dispute arising under this Decree. In the event that such disputes cannot be resolved through this meet and confer process, the Parties agree to request a settlement meeting before the Magistrate Judge. In the event that the Parties cannot resolve the dispute by the conclusion of the settlement meeting with the Magistrate Judge, the Parties agree to submit the dispute via motion to the Magistrate Judge.

33. **Corrective and Follow Up Action.** Where an effluent limitation or benchmark is exceeded, or when Soundkeeper, CFE and CLF provide Shetucket notice of non-compliance, Shetucket shall take responsive actions to improve storm water management practices, including re-evaluating structural and non-structural BMPs and considering additional BMPs aimed at reducing levels observed in samples.

34. In furtherance of these obligations, the owner and operator of the Facility shall prepare a written statement ("Memorandum") discussing:

- Any constituent which experienced an exceedance;
- An explanation of the possible cause(s) and/or source(s) of the excess levels; and
- Responsive actions, including modified or additional feasible best management practices ("BMPs"), to reduce storm water pollutants and further reduce the possibility of future exceedances.

Such Memorandum shall be e-mailed and sent via first class mail to Soundkeeper, CFE and CLF no later than 45 days following receipt of the analytical results.

35. Any additional measures set forth in the Memorandum shall be implemented and the Facility's SWPPP shall be amended as necessary to include any additional BMP measures designated in the Memorandum no later than 120 days after the Memorandum is sent to Soundkeeper, CFE and CLF, or 120 days after the last event in the process described below.

36. Upon receipt of the Memorandum, Soundkeeper, CFE and CLF may review and comment on any additional measures. If requested by Soundkeeper, CFE and CLF within thirty (30) days of receipt of such Memorandum, the Parties shall meet and confer, which may include a site inspection, within sixty (60) days after the receipt of the Memorandum to discuss the contents of the Memorandum and the adequacy of proposed measures to improve the quality of the Facility's storm water. If within thirty (30) days of the Parties meeting and conferring, the Parties do not agree on the adequacy of the additional measures set forth in the Memorandum, the Parties may agree to seek a settlement conference with the Judge. If the Parties fail to reach agreement on additional measures, Soundkeeper, CFE and CLF may bring a motion

before the Judge. If Soundkeeper, CFE and CLF do not request a meet and confer regarding the Memorandum within thirty (30) days of receipt, Soundkeeper, CFE and CLF shall waive any right to object to such Memorandum pursuant to this Decree.

37. Any concurrence or failure to object by Soundkeeper, CFE and CLF, as appropriate, with regard to the reasonableness of any additional measures required by this Decree or implemented by Defendant shall not constitute a waiver by the Plaintiff of any right that it may have to challenge or commence an action to challenge the adequacy of the SWPPP to meet the requirements of the Clean Water Act. Nothing contained herein shall limit Plaintiff's rights to challenge the BMPs as not being compliant with the CWA in a new action and nothing contained herein shall waive any defense that Defendant may assert in regard to the adequacy of the BMPs followed at Defendant's facility, nor shall this Order constitute an admission by Defendants that Riverkeeper has jurisdiction to determine the adequacy of the BMPs.

X. MISCELLANEOUS PROVISIONS

38. **Entire Agreement.** This Decree constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written, among the Parties.
39. **Notices.** Any notice, demand, copies of documents and other communications required to be made under the provisions of this Decree (collectively, "Notices") by any Party hereto shall be effective only if in writing and (a) personally served, (b) mailed by United States certified mail, return receipt requested, postage prepaid, or (c) sent by a nationally recognized courier service (i.e., Federal Express) for next-day delivery, to be confirmed in writing by such courier. Notices shall be directed to the Parties at their respective addresses set forth below. Notices given in the foregoing manner shall be deemed given (a) when actually received or refused by the party to whom sent if delivered by courier, or (b) if mailed, on the day of actual delivery as shown by the addressee's certified mail receipt or at the expiration of three (3) business days after the date of mailing, whichever first occurs.

Notices for Soundkeeper, CFE and CLF shall be sent to:

Reed W. Super, Esq.
Super Law Group, LLC
131 Varick Street, Suite 1033
New York, New York 10013
Attorney for Soundkeeper, CFE and CLF

Notices sent to the individual listed above at the address listed above shall be deemed as notice to Soundkeeper, CFE and CLF.

Notice for Shetucket shall be sent to:

Stephen Seder
The Shetucket Iron & Metal Company, Inc.
P.O. Box 349, New Wharf
Norwich, CT 06360

With a copy to:

Mark Block, Esq.
Block, Janney & Pascal, LLC
138 Main Street
Norwich, Connecticut 06360
Attorney for Shetucket

Each Party shall promptly notify the other Party of any change in the above-listed contact information by using the procedures set forth in this paragraph.

40. **Authorization.** Each person signing this Decree represents and warrants that s/he has been duly authorized to enter into this Decree by the Party on whose behalf it is indicated that the person is signing.
41. **Successors and Assigns.** This Decree shall be binding upon and inure to the benefit of the Parties and their respective representatives, heirs, executors, administrators, successors, officers, directors, agents, attorneys, employees and permitted assigns.
42. **Interpretation.** The provisions contained herein shall not be construed in favor of or against any Party because that party or its counsel drafted this Decree, but shall be construed as if all Parties prepared this Decree, and any rules of construction to the contrary are hereby specifically waived. The terms of this Decree were negotiated at arm's length by the Parties hereto.
43. **Headings.** The section and paragraph headings contained in this Decree are for reference purposes only and shall not affect in any way the meaning or interpretation of this Decree.
44. **Counterparts.** This Decree may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Decree.
45. **Severability.** In the event that any of the provisions of this Decree are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

SOUNDKEEPER, INC.

BY: _____ DATE: _____

TITLE: _____

CONNECTICUT FUND FOR THE ENVIRONMENT, INC.

BY: _____ DATE: _____

TITLE: _____

CONSERVATION LAW FOUNDATION, INC.

BY: _____ DATE: _____

TITLE: _____

THE SHETUCKET IRON & METAL COMPANY, INC.

BY:  DATE: 5-29-14

TITLE: V.P.

ENTERED and DATED this ____ day of _____, 2014

Honorable Robert N. Chatigny
United States District Judge

SOUNDKEEPER, INC.

BY: _____ DATE: _____

TITLE: _____

CONNECTICUT FUND FOR THE ENVIRONMENT, INC.

BY: _____ DATE: _____

TITLE: _____

CONSERVATION LAW FOUNDATION, INC.

BY: C. M. Kuhl DATE: 5/28/14

TITLE: VP and Director

THE SHETUCKET IRON & METAL COMPANY, INC.

BY: _____ DATE: _____

TITLE: _____

ENTERED and DATED this ___ day of _____, 2014

Honorable Robert N. Chatigny
United States District Judge

SOUNDKEEPER, INC.

BY: _____ DATE: _____

TITLE: _____

CONNECTICUT FUND FOR THE ENVIRONMENT, INC.

BY: [Signature] DATE: 5/30/14

TITLE: President

CONSERVATION LAW FOUNDATION, INC.

BY: _____ DATE: _____

TITLE: _____

THE SHETUCKET IRON & METAL COMPANY, INC.

BY: _____ DATE: _____

TITLE: _____

ENTERED and DATED this__ day of _____, 2014

Honorable Robert N. Chatigny
United States District Judge

SOUNDKEEPER, INC.

BY: James Backer DATE: 5/27/14

TITLE: Executive Dir.

CONNECTICUT FUND FOR THE ENVIRONMENT, INC.

BY: _____ DATE: _____

TITLE: _____

CONSERVATION LAW FOUNDATION, INC.

BY: _____ DATE: _____

TITLE: _____

THE SHETUCKET IRON & METAL COMPANY, INC.

BY: _____ DATE: _____

TITLE: _____

ENTERED and DATED this ____ day of _____, 2014

Honorable Robert N. Chatigny
United States District Judge

